

## **DISCLAIMER**

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## **APPLICATION OF**

**ONE CALL CONCEPTS, INC.**

**CASE NO. PUE-2002-00380**

**For revocation of certificates of existing certificate holders, for certification as a notification center, and for a waiver of 20 VAC 5-300-90 B 3 (c)**

## **HEARING EXAMINER'S RULING**

**December 23, 2002**

On July 5, 2002, One Call Concepts, Inc. ("OCC" or the "Company") filed an Application with the State Corporation Commission requesting a certificate to operate as the single one-call notification center provider for Virginia. The Application further requested that the Commission revoke the certificates of the two current certificate holders which each have a separate service territory in the Commonwealth.

On December 10, 2002, the Commission issued an Order for Notice and Hearing ("Order of December 10") which docketed the matter and directed OCC to provide notice of its Application to members of the two current certificate holders, Northern Virginia Utility Protection Service, Inc. ("NVUPS") and the Virginia Underground Utility Protection Service, Inc. ("VUUPS"). The Order of December 10 further directed counsel for VUUPS to provide a list of the names and addresses of its members to counsel for OCC on or before December 13, 2002.<sup>1</sup> Finally, the Order of December 10 established a procedural schedule; assigned a Hearing Examiner to conduct further proceedings; and set a hearing date of April 2, 2003.

On December 12, 2002, the Commission entered an Order ("Order of December 12") in which it substituted the notice contained in the Order of December 10 with a corrected version.

On December 13, 2002, VUUPS filed a Motion for Modification of Service of Notice ("Motion for Modification of Service") requesting that it, instead of OCC, be permitted to fulfill the service requirement with respect to VUUPS' members. In support of its Motion, VUUPS argues that it can provide notice more promptly, conveniently, and economically than OCC. VUUPS further states that giving direct notice to its members would avoid the need to transfer names and information to OCC, which would then have to send out the notices. Further, VUUPS would inform its members of this proceeding even in the absence of a Commission requirement that they be notified. Finally, VUUPS offers to

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<sup>1</sup>OCC has a list of names and addresses of the members of NVUPS, but not of VUUPS.

provide proof of service on or before January 13, 2003, as provided in Ordering Paragraph (12) of the Order of December 10.

On December 17, 2002, OCC filed a motion opposing VUUPS' Motion for Modification of Service ("Motion in Opposition"), arguing that VUUPS seeks to monopolize the transmission of information regarding the Application to its members. OCC refers to the Motion for Modification of Service as "a specious attempt by VUUPS to prevent OCC from communicating with members of VUUPS."<sup>2</sup> OCC argues it should have an opportunity to communicate directly with VUUPS members to accurately transmit information, answer questions, and seek their support for the Application. OCC requests the Motion for Modification of Service be denied and VUUPS compelled to transmit immediately the list of the names and addresses (including e-mail) of its members to counsel for OCC.

Further, on December 18, 2002, counsel for OCC filed a Motion seeking an extension of time ("Motion to Extend") to file its direct testimony, exhibits, and other materials supporting its Application. Specifically, OCC requests an extension of time from December 20, 2002, to January 14, 2003, for the filing of additional direct testimony, exhibits and other material supporting its Application.

On December 19, 2002, counsel for NVUP and VUUP filed a Response to the Motion to Extend ("Response") stating that they neither support nor oppose the Motion to Extend, but note that if the Motion to Extend is granted, filing dates for subsequent testimony should be extended as well.

I find that the VUUPS Motion for Modification of Service should be granted and OCC's request to compel should be denied. The Commission's Order directed that notice be provided to interested parties. Whether OCC or VUUPS provides the notice makes no difference, because the content of the notice remains the same. At issue here are the names and addresses of VUUPS' members and whether OCC should have access to that list. The important factor remains notification of this Application. VUUPS has represented that it can and will provide timely notice to its members. I further find the Motion to Extend should be granted and the procedural schedule modified. Accordingly,

**IT IS DIRECTED** that:

- (1) The Motion for Modification of Service filed by VUUPS is hereby granted;
- (2) OCC's request to compel counsel for VUUPS to transmit the names and addresses of its members is denied;
- (3) VUUPS shall communicate to its members by means of first-class mail or via electronic means on or before January 10, 2003, the notice set forth below;
- (4) On or before January 10, 2003, OCC shall provide a copy of the notice of its Application prescribed below to the members of NVUPS. Service may be made by first-

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<sup>2</sup>Motion in Opposition at 3.

class mail to the customary place of business or residence of the person served or via electronic means;

(5) On or before January 10, 2003, OCC shall provide a copy of the notice of its Application prescribed below on the chairman of the board of supervisors and county attorney of each county and upon the mayor or manager of every city and town (or upon equivalent officials in counties, towns and cities having alternate forms of government) throughout the Commonwealth, who are not otherwise being served notice of the Company's Application pursuant to this Ruling. Service shall be made by first-class mail to the customary place of business or residence of the person served;

(6) On or before January 10, 2003, OCC shall complete publication of the following notice as classified advertising on one occasion in major newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION BY  
ONE CALL CONCEPTS, INC., FOR REVOCATION  
OF CERTIFICATES OF EXISTING CERTIFICATE HOLDERS  
AND FOR CERTIFICATION AS A NOTIFICATION CENTER  
CASE NO. PUE-2002-00380

One Call Concepts, Inc. ("OCC" or the "Company"), has filed an application ("Application") with the State Corporation Commission ("Commission") requesting the Commission grant the Company a certificate to operate as the single one-call notification center provider serving the Commonwealth of Virginia as a whole. The Application further requests that the Commission revoke the certificates of the two current certificate holders, Northern Virginia Utility Protection Service, Inc., and Virginia Underground Utility Protection Service, Inc., which each have a separate service territory in the Commonwealth.

Copies of the Application are available, at no cost, upon written request to counsel for OCC, Gregory D. Grant, Esquire, and James M. Hoffman, Esquire, Shulman Rogers Gandal Pordy & Ecker, P.A., 11921 Rockville Pike, Rockville, Maryland 20852-2743. Interested persons may also review a copy of the Application and the Commission's Order in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday. A copy of the Commission's Order may also be obtained on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

A public hearing on the Application will be held on April 29, 2003, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia. Public

witnesses desiring to make statements at the hearing concerning this Application need only appear in the Commission's Second Floor Courtroom in the Tyler Building at 9:45 a.m. on the day of the hearing and register a request to speak with the Commission's bailiff.

Any interested person may participate as a respondent in the proceeding by filing, on or before January 31, 2003, an original and 15 copies of a notice of participation with the Clerk of the Commission at the address set forth above. Interested parties should obtain a copy of the Commission's Order for further details on participation as a respondent.

All filings with the Clerk of the Commission shall refer to Case No. PUE-2002-00380 and shall simultaneously be served on counsel for the Company at the address set forth above.

#### **ONE CALL CONCEPTS, INC.**

(7) On or before January 14, 2003, OCC shall file with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and 15 copies of any additional direct testimony, exhibits, and other material supporting its Application. OCC shall serve a copy of any such filing on Staff and all respondents;

(8) On or before January 16, 2003, OCC and VUUPS shall file with the Clerk of the Commission at the address set forth above proof of the publication and service required by the Commission Orders and this Ruling;

(9) Any interested person may participate as a respondent in this proceeding by filing, on or before January 31, 2003, an original and 15 copies of a notice of participation with the Clerk of the Commission at the address set forth in Ordering Paragraph (7) above. Such notice shall simultaneously be served on counsel for the Company Gregory D. Grant, Esquire, and James M. Hoffman, Esquire, Shulman Rogers Gandal Pordy & Ecker, P.A., 11921 Rockville Pike, Rockville, Maryland 20852-2743. Pursuant to Rule 5 VAC 5-20-80 of the Commission's Rules of Practice and Procedure, any notice of participation shall set forth (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Interested parties shall refer in all of their filed papers to Case No. PUE-2002-00380;

(10) Within five business days of receipt of a notice of participation as a respondent, the Company shall serve upon each respondent a copy of the Application and all materials filed with the Commission, unless these materials have already been provided to the respondent;

(11) On or before March 14, 2003, each respondent shall file with the Clerk of the Commission an original and 15 copies of any testimony and exhibits by which the respondent expects to establish its case and shall serve copies of the testimony and exhibits on counsel for the Company, Staff, and all other respondents;

(12) The Commission Staff shall investigate the Company's Application and, on or before April 7, 2003, shall file with the Clerk of the Commission an original and 15 copies of the Staff's testimony and exhibits regarding the Application and shall promptly serve a copy on counsel for the Company and all respondents;

(13) On or before April 16, 2003, the Company shall file with the Clerk of the Commission an original and 15 copies of any testimony and exhibits that it expects to offer in rebuttal to the testimony and exhibits of the respondents and the Commission Staff. The Company shall on the same day serve one copy on Commission Staff and respondents;

(14) A public hearing shall be convened on April 29, 2003, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive evidence on the Application. Any person desiring to make a statement at the public hearing concerning the Application need only appear in the Commission's Second Floor Courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the Bailiff; and

(15) All other provisions of the Commission's Orders of December 10 and December 12, 2002, not addressed in this Ruling shall remain in full force and effect.

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Howard P. Anderson, Jr.  
Hearing Examiner